Matrimonial cohabitation is a duty imposed by law, and a promise by either party to pay the other for performing this duty is a *nudum pactum,* and therefore unenforceable, since an agreement to do what one is legally bound to do is without consideration. Such an agreement is also contrary to sound public policy, because it is promotive of separation between husband and wife. *Miller* v. *Miller,* 78 Iowa 177, 35 N. W. 464, 42 N. W. 641, 16 Am. St. Rep. 431; *Michigan Trust Co.* v. *Chapin,* 106 Mich. 384, 64 N. W. 334, 58 Am. St. Rep. 490. Consequently, an agreement by a husband to pay money to his wife if she will live with him is void as without consideration. *Copeland* v. *Boaz,* 9 Baxt. (Tenn.) 223, 40 Am. Rep. 89; *Roberts* v. *Frisby,* 38 Tex. 220. Nothing is said in the reports of these two cases to indicate whether or not divorce proceedings had been commenced, or were pending.

The consideration of a note given to induce a wife to return to her husband is illegal, even though the wife had left her husband for good cause, entitling her to a divorce, and had consulted counsel with a view to obtaining a divorce. Actual proceedings, however, had not been instituted for a divorce. *Merrill* v. *Peaslee,* 146 Mass. 460, 16 N. E. 271, 4 Am. St. Rep. 334; note the strong dissenting opinion. The majority opinion was to the effect that matrimonial cohabitation cannot be made an article of trade, and is without the range of pecuniary considerations. The judgment of the majority expressly guarded itself against expressing an opinion as to the legality of an agreement not to prosecute proceedings for a divorce. The same court has since decided that the forbearance from bringing a well-founded suit for divorce is a sufficient and legal consideration to support an action by the wife against the husband upon his failure to keep his contract. *Polson* v. *Stewart,* 167 Mass. 211, 45 N. E. 737, 36 L. R. A. 771, 57 Am. St. Rep. 452.

Where a wife refrains from carrying out an oral, unexecuted threat to institute a suit for divorce, and returns to live with her husband thereafter, and there is no action for divorce pending, it has been held that there is no consideration for an agreement on the part of the husband to cancel an ante-nuptial contract. *Fisher* v. *Koontz,* 110 Iowa 498, 80 N. W. 551.

There is a sufficient and valid consideration when the agreement between the husband and the wife is that the wife shall abandon a pending suit for divorce, and renew her marital relations with her husband. *Reithmaier* v. *Beckwith,* 35 Mich. 109; *Barbour* v. *Barbour,* 49 N. J. Eq. 429, 24 Atl. 227. It would seem, therefore, that the principal case is in agreement with the authorities; and, certainly it accords with sound reason and a wise public policy.

INCOME TAX—DEDUCTIONS—LOSSES SUSTAINED IN OUTSIDE SPECULATION—"LOSSES INCURRED IN TRADE."—The plaintiff was a member of a firm dealing in bags and bagging. He bought and sold cotton on the Cotton Exchange on his individual account, in no way connected with the firm. Each year he deducted from his gross income losses resulting from these transactions, as "losses incurred in trade" under Income Tax Act Oct. 3, 1913, § II, subd. 2B. The defendant, a revenue collector, refused to allow such exemptions and the plaintiff paid the tax thereon

under protest. He then brought an action to recover the amounts so paid. *Held*, no recovery. *Mente* v. *Eisner*, 266 Fed. 161. See NOTES, p. 131.

INSURANCE—STANDARD FIRE POLICY—EFFECT OF VOID CHATTEL MORTGAGE UNDER THE MORTGAGE CLAUSE.—The plaintiff was the holder of a standard fire insurance policy issued by the defendant, with the usual clause against mortgages providing that it should be void if the property insured should be incumbered by a chattel mortgage, unless otherwise provided for by an agreement indorsed on the policy. Without notifying the company, the plaintiff mortgaged the property. The mortgage proved to be void for usury. After loss, in answer to a suit on the policy, the defendant set up the void mortgage as being a breach of the condition of the policy against incumbrances. *Held*, judgment for the defendant. *Lipedes* v. *Liverpool, etc., Insurance Co.*, 171 N. Y. Supp. 484, 128 N. E. 160.

It is a general rule of contract law that where doubt exists as to the meaning of a contract prepared by one party on the faith of which the other has incurred obligations, that construction should be adopted which is most favorable to the latter party. This rule finds a very ready application in insurance contracts, especially where a forfeiture is involved, the object being to grant rather than to deny indemnity. *Grace* v. *American Central Ins. Co.*, 109 U. S. 278; *Crowell* v. *Maryland Motor Car Ins. Co.*, 169 N. C. 35, 85 S. E. 37, Ann. Cas. 1917D 50; *Laue* v. *Grand Fraternity*, 132 Tenn. 235, 177 S. W. 941, Ann. Cas. 1917A 376.

In the instant case the policy involved contained a provision that it should be void if additional insurance valid or invalid were taken out. The mortgage clause contained no such stipulation. See Standard Fire Policy. There being this ambiguity, a case for the application of the above rule is made out.

The spirit and intention of the mortgage clause in a policy is to guard the insurer against any increase of moral hazard, involved in the changed relations of the insured to the property. *Rosenstein* v. *Traders' Ins. Co.*, 79 N. Y. Supp. 736; *Farmers & Merchants' Ins. Co.* v. *Jensen*, 56 Neb. 284, 76 N. W. 577, 44 L. R. A. 861; *Ayres* v. *Hartford Ins. Co.*, 17 Iowa 176, 85 Am. Dec. 553. Judicial decisions uniformly hold that where an insurer attempts to avoid a policy on the ground that the property was incumbered in violation of a term of a policy, it is incumbent upon him to show the incumbrance to have been such in reality as well as in appearance. *Rowland* v. *Home Ins. Co.*, 82 Kan. 220, 108 Pac. 118, 136 Am. St. Rep. 104; *Forward* v. *Continental Ins. Co.*, 142 N. Y. 382, 37 N. E. 615, 25 L. R. A. 637.

Under policies in reference to the provision there invalidating a policy upon the ground of "other insurance", it has been frequently held that the term other insurance meant other valid insurance. *Germania Fire Ins. Co.* v. *Klewer*, 129 Ill. 599, 22 N. E. 489; *Reed* v. *Equitable, etc., Ins. Co.*, 17 R. I. 785, 24 Atl. 833, 18 L. R. A. 496; *Phoenix Ins. Co.* v. *Copeland*, 86 Ala. 551, 6 So. 143, 4 L. R. A. 848.